

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

July 17, 2015

Alan Berger
Law Offices of Alan Berger
95 South Market Street, Suite 545
San Jose, CA 95113

SUBJECT: Heron Bay Homeowners Association Proposal For Staffed Security Kiosk And License Plate Cameras/Readers And Resolution Of Existing Permit Violations
BCDC Permit No. M1992.057 and Enforcement Case No. ER2014.015

Dear Mr. Berger:

On May 28, 2015, I was contacted by Elmer Pandoranda, Planner for City of San Leandro, who informed me that on behalf of the Heron Bay HOA, you have submitted an application to the City for a security kiosk located in the public right-of-way encompassing the Lewelling Boulevard circle. On June 3, 2015, BCDC staff met with City of San Leandro staff to discuss your proposal and confirmed it was the same proposal to which staff had already provided feedback in a March 12, 2015, email to you from Adrienne Klein, Chief of Enforcement.

Please be advised that the proposal continues to raise concerns as potentially inconsistent with Special Condition II.F (Public Access) of BCDC Permit M1992.057 as it may have a privatizing effect on the required public access amenities such as the trails in Roberts Landing Slough and access thereof. Additionally, placing the kiosk bayward of the forthcoming public access parking spaces, that we have negotiated as necessary to resolve the current permit violations, will likely deter visitors to the shoreline.

BCDC staff believes there are alternative viable solutions to the Heron Bay residents' safety concerns that would not conflict with public access including the placement of gates off of the Bayfront Drive side streets: Heron Drive, Harbor Way, Oceanside Way, and Anchorage Drive. This alternative would not require BCDC authorization, not deter pedestrian and bicycle users from the public trails nor obstruct Bay views along Bayfront Drive, and provide better security to Heron Bay residents than a kiosk. If you do not pursue this alternative and, as stated in Ms. Klein's letter, you would have to convincingly explain why it is not feasible in a prospective application requesting authorization for the kiosk.

Finally, as you know from past correspondence and meetings with BCDC staff, we informed you over a year ago that the Heron Bay HOA is not in compliance with the public access requirements of the Permit. The legal instrument to guarantee the public access required by Special Condition II.F.2 (see the June 12, 2014 letter to you from Ande Bennett) has not been submitted and the physical public access amenities required by Special Condition II.F.3.c (see the June 19, 2014 letter to you from Ande Bennett) are still not in place. Now the time has come to fix these public access violations separately from any type of kiosk proposal.

Alan Berger
July 17, 2015
Page 2

Please submit to BCDC staff an application to amend the Permit to: (i) retain the as-built sidewalk and landscaping along Bayfront Drive; (ii) provide Class 3 bike lanes along Bayfront Drive; (iii) provide Bay Trail access/way-finding signage per BCDC guidelines; and (iv) provide ten public shore parking spaces, including one that is ADA compliant, along Bayfront Drive.

After the Permit is amended the legal instrument to guarantee the public access can be submitted to BCDC staff counsel for review and, upon approval, the legal instrument shall be recorded with Alameda County.

If this application is not submitted and filed within 30 days of the date of this letter, or by August 17, 2015, we will issue a letter that commences an administrative penalty clock.

If you have any questions, please do not hesitate to contact me at 415/352-3668 or Maggie.Weber@bcdca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Maggie Weber".

MAGGIE WEBER
Enforcement Analyst

cc: Cynthia Battenberg, City of San Leandro
Keith Cooke, City of San Leandro
Elmer Penaranda, City of San Leandro

MSW/go